

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.S. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
DEPARTMENT OF PUBLIC SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

T.S.,

Defendant and Appellant.

E060710

(Super.Ct.No. INJ1100440)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence P. Best,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

Appellant T.S. (mother) appeals from the juvenile court's denial of her request to continue the Welfare and Institutions Code¹ section 366.26 hearing regarding her children, T.S. and C.S. (the children). We affirm.

PROCEDURAL BACKGROUND

On July 26, 2011, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition alleging that T.S., who was two years old at the time, and C.S., who was eight months old, came within subdivisions (a) (serious physical harm), (b) (failure to protect), (e) (severe physical abuse), and (g) (no provision for support). The petition alleged that a forensic pediatrician reported that the children had suffered multiple serious injuries, including bruises to the head, ears, back, face, and abdomen, and damage to the throat and mouth. The petition also alleged that mother and/or her boyfriend, V.M., perpetrated serious physical abuse on the children resulting in substantial injuries, that mother and the children's father² had a history of domestic violence, and that father was not a member of the children's household and had failed to provide the children with adequate food, clothing, shelter, and medical treatment.

The social worker filed a detention report, which stated that DPSS received a physical abuse referral on July 22, 2011, when mother brought the children into the emergency room due to several injuries. Mother stated that when she changed T.S.'s

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Father is not a party to this appeal.

diaper that morning, it was full of blood. T.S. had a swollen scrotum and a mass in his pubic area. He also had healing contusions all over his body. As to C.S., mother stated that she noticed C.S. wince when she lifted her leg to change her diaper. C.S. had a left femur fracture, contusions on both sides of her forehead and right cheek, and a human bite mark on her right ear. Mother said she did not know how the children sustained their injuries. She stated that T.S. may have caused his sister's broken leg. Mother reported that her boyfriend, V.M., had watched the children the day before while she was at work.

A police officer and the social worker went to mother's apartment to interview V.M., since he and mother lived together. V.M. confirmed that he had watched the children the day before. He said that when he gave T.S. a bath, he noticed a small cut on his testicle. V.M. said that when mother was not home, he would take care of them, but they also stayed with a babysitter. V.M. reported that T.S. was always hitting C.S. and throwing toys at her, and that he has caught him sitting on her. The last time he saw him sitting on her was the day before. V.M. said he punished T.S. right away by spanking him lightly on his bottom. V.M. said he had no idea how C.S. hurt her leg.

The social worker talked to the babysitter, M.D., on the telephone. She said she had just started babysitting the children on July 15, 2011, and that the last time she watched them was on July 20, 2011. She did not notice anything strange when she changed C.S.'s diaper that day. The babysitter did not notice anything wrong with T.S. either. On July 18 or 19, C.S. had a small bruise on her cheek, but mother said that T.S. had hit her with a toy.

The social worker went to Loma Linda Medical Center, where the children had been examined. Dr. Amy Young, the forensic pediatrician, stated that there was no doubt the children had been physically abused. She said there was no way possible that the two-year-old, T.S., was strong enough to cause any of the injuries to C.S., as mother reported. Dr. Young opined the injuries on both children were caused by adults. She reported that T.S.'s injuries included a bruise on his back, a bruise under his eye, and an oral injury on the back of his palate, which was caused by someone forcing an object in his mouth. She said the injury to his testicle was caused by someone pulling and twisting his genitals. T.S. also had a bruise and swelling on and near his penis, and the top layer of skin on his scrotum was "gone." Additionally, T.S. had an abdominal injury caused by an impact and noticeable scars to the side of his abdomen area. Dr. Young emphasized that all of these injuries were caused by an adult.

As to C.S., Dr. Young reported that she had an oral injury caused by someone forcing an object in her mouth. C.S. also had multiple bruises on her head. Dr. Young noticed what appeared to be the imprint of a hand on one of the bruises. C.S. also had bruising on her ears caused by someone pulling and pinching them. Dr. Young opined that C.S.'s fracture to her left femur bone was extremely bad, and that it was an injury inflicted by an adult. As to the timeframe of when the children sustained these injuries, Dr. Young stated that they were sustained over "a day or two."

The social worker further reported that she interviewed the maternal grandmother (MGM). MGM said that mother was neglectful of C.S. and aggressive with T.S. MGM

also said that mother needed anger management help. MGM reported that mother never wanted C.S. to be born, and she wanted to abort her. MGM was not surprised about the physical abuse allegations, and she opined that C.S.'s leg injury may have been caused by mother throwing her against a wall. MGM said she had witnessed mother beating T.S. many times. MGM indicated a desire to care for the children, but she had a Child Protective Services (CPS) history pertaining to mother as a child.

At a detention hearing on July 27, 2011, the court detained the children in foster care. They were placed together in the same home.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on August 17, 2011, recommending that the children be declared dependents of the court and remain in foster care, and that reunification services be denied to mother pursuant to section 361.5, subdivision (b)(5) and (6).

The social worker reported that there were two unfounded allegations of physical abuse and general neglect in 2011 regarding mother, father, and the children. However, there was a physical abuse and general neglect referral concerning mother as a child that was substantiated. Her father was arrested for child abuse.

The social worker filed an addendum report in which she stated that mother was arrested on August 30, 2011, for willful child cruelty. (Pen. Code, § 273, subd. (a).) She was charged with three felony counts with regard to the children's injuries. After mother brought the children to the hospital on July 22, 2011, the police started investigating. The

police interviewed MGM, who again said she had witnessed mother beat T.S.³ to the point that mother was exhausted. The police also interviewed mother's sister, who said that she saw mother abusing the children about five times when she lived with them. She saw mother hold T.S. up by one of his arms and hit him on the buttocks. The maternal grandfather also stated that he had witnessed mother beat T.S.

In the addendum report, the social worker reported updated information from Dr. Young regarding the children's injuries. Dr. Young determined that C.S.'s leg fracture was caused by force or bending. She reported that the child could not have caused this injury herself, nor could rough play with a sibling. Dr. Young also noted bruises on C.S.'s lower middle back and on her forehead. Dr. Young stated that C.S.'s injuries were from abuse and should have been noticed by a parent or caretaker.

Mother continued to contend that she did not know how her children were injured.

The social worker further reported that DPSS submitted information as to the maternal grandparents regarding placement. California Law Enforcement Telecommunication Systems (CLETS) and Live Scan requests were completed on August 1, 2011 and November 23, 2011. The Relative Assessment Unit (RAU) made several attempts to contact the maternal grandparents for a home evaluation, but the maternal grandparents failed to comply with requests; thus, the RAU process was cancelled on December 14, 2011.

³ MGM apparently referred to T.S. as "Anthony" during her interview. "Anthony" is T.S.'s middle name.

The contested jurisdiction/disposition hearing was continued several times.

In an addendum report dated April 18, 2012, the social worker reported that a second RAU assessment was submitted on behalf of the maternal grandparents. The maternal grandparents were notified of the need to complete an investigation. It was reported that their previous CPS history may require further documentation, assessment, and approval.

A contested jurisdictional hearing was held on August 27, 2012, and the court sustained the section 300 petition and adjudged the children dependents of the court. The court ordered reunification services for mother over DPSS's objection.

The social worker filed an addendum report on September 7, 2012, and reported that the maternal grandparents completed the necessary paperwork for the RAU assessment. They requested an exemption, which was denied. Thus, they were notified that their home was not cleared for placement, and DPSS was not able to place the children with them.

The court held a disposition hearing on September 12, 2012, and found that out-of-home placement was necessary for the children and that their current placement was appropriate. The court approved a case plan for mother and ordered her to participate. Her case plan required her to participate in an anger management program, domestic violence program, and general counseling.

Six-month Status Review Hearing

The social worker filed a six-month status review report on February 21, 2013, recommending that the court terminate mother's services. Over the last reporting period, she had participated in just one intake appointment for counseling services. Mother was referred for services and stopped attending counseling. She failed to maintain contact with DPSS. Due to her lack of effort to address the concerns that brought the children to DPSS's attention, the social worker concluded that it would be detrimental to the children's well-being to return to mother's care.

The social worker also reported that, as to her criminal case, mother was placed on probation for three years.

At the six-month hearing on May 8, 2013, county counsel acknowledged that mother's visits had been consistent, but continued to recommend that her services be terminated. The children's counsel stated that she would have liked to have seen more progress by mother, but acknowledged that the consistency and quality of mother's visits had been good. Thus, she was not opposed to continuing services. The court ordered continued mother's services to the 12-month hearing.

Twelve-month Status Review

The social worker filed a 12-month status review report on August 29, 2013, and recommended that the court terminate mother's services. Mother had started seeing a therapist on February 20, 2013. The therapist said mother's attendance had been regular and she was making progress. They had discussed domestic violence, but not physical

abuse. The therapist opined that mother was not stable enough to have her children return to her, but she could get stable with more therapy.

The social worker noted that the children were detained more than two years ago, and that mother had only completed one requirement—a parenting education program. The social worker noted that mother had not addressed the main reasons for the children’s removal—severe physical abuse and neglect. Regarding the anger management program requirement, mother said that she thought anger management was only part of her criminal case, and that she had two more years to complete it. However, the previous social worker specifically told mother on January 31, 2013, that she needed to complete anger management. She was given referrals, but failed to start a program. Mother also had not started a domestic violence program, but had talked about domestic violence in her individual therapy. Moreover, although mother had attended 16 therapy sessions thus far, she still denied any responsibility for the children’s injuries. When told that the children’s injuries were in various stages of healing, which meant they had been abused over time, she said she never saw any marks or injuries. Thus, the social worker concluded that mother had made minimal progress on her case and recommended termination of services.

The 12-month review hearing was held on September 18, 2013. Mother contested the matter, and the court set a hearing for October 24, 2013. Mother submitted a letter informing the court that she just enrolled in an anger management program.

The social worker filed an addendum report on October 17, 2013, indicating that mother had stopped therapy. The social worker told her she needed to return to therapy and a referral had already been made. Furthermore, mother still had not enrolled in a domestic violence program. On October 8, 2013, mother told the social worker that she completed her anger management program. The social worker started asking her questions about whether she had an anger management problem, and mother said no. Mother said she had never become angry with the children, just frustrated. The social worker contacted the anger management facilitator, who said that mother completed an accelerated course in 10 days. During the course, mother continued to state that she had done nothing wrong. The social worker also reported that she had a conversation with mother on August 7, 2013, during which mother said she could not be held responsible for what happened to the children. She insisted that none of the physical abuse was her fault. Mother also could not admit that she put the children in danger by staying in a domestic violence relationship. The social worker concluded that, despite mother's participation in some of her case plan, she had not benefitted from her services.

The court held a contested 12-month review hearing on October 24, 2013, and found that return of the children to mother would create a substantial risk of detriment to the children. The court terminated services and set a section 366.26 hearing for February 21, 2014.

Section 366.26

The social worker filed a section 366.26 report on January 30, 2014, recommending that the court terminate parental rights and set adoption as the permanent plan. Since the court terminated services, mother reported that she enrolled in a 52-week anger management program that was required for her criminal case. She was still not enrolled in a domestic violence program, and she was not continuing therapy. The social worker reported that the children had been living with the current foster parents since November 8, 2013. The foster parents were willing and able to provide a permanent home for the children. Both children had expressed that they liked living with the current caregivers and expressed a desire to stay with them.

The social worker further reported that the maternal grandparents came to the CPS office and said they wanted to go through the Relative Assessment to request placement again. When the social worker said he knew their previous attempts failed because of a substantiated allegation of child abuse, the maternal grandmother said she did not abuse mother as a child, but mother “made that story up.” The maternal grandmother also claimed that they were denied placement before because the previous social worker did not like them and told the RAU to deny their request. Another RAU referral was then submitted on November 19, 2013. The relative assessment worker subsequently recommended to deny the home certification, based on the maternal grandparents’ past CPS history of child abuse. The background checks showed a substantiated allegation of child abuse as to the maternal grandfather, and a substantiated allegation of general

neglect as to the maternal grandmother. Thus, an exemption would be needed. The RAU worker forwarded the exemption paperwork to his supervisor.

On February 11, 2014, the RAU supervisor emailed the social worker stating that she denied the maternal grandparents' referral and was waiting for the Assistant Regional Manager to get her final decision.

On February 21, 2014, the court held the section 366.26 hearing. Mother requested a 60-day continuance to allow her counsel to consider filing a section 388 petition regarding her updated information on her domestic violence classes, and to allow the maternal grandparents to "follow through" with the exemption package. The court denied the motion for continuance. The court then found it likely that the children would be adopted, terminated parental rights, and set adoption as the permanent plan.

ANALYSIS

The Court Properly Denied Mother's Request for a Continuance

The court denied mother's oral request for a continuance for her counsel to consider filing a section 388 petition, and for the maternal grandparents to "follow through" with the relative placement exemption package. Mother argues that the court abused its discretion in denying her request to continue the section 366.26 hearing. We disagree.

A. Standard of Review

"The juvenile court may continue a dependency hearing at the request of a parent for good cause and only for the time shown to be necessary. [Citations.] Courts have

interpreted this policy to be an express discouragement of continuances. [Citation.] The court’s denial of a request for continuance will not be overturned on appeal absent an abuse of discretion. [Citation.]” (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180.)

B. There Was No Abuse of Discretion

“Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. . . . [¶] In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.” (§ 352, subd. (a).) “[N]o continuance shall be granted that is contrary to the interest of the minor. In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (*Ibid.*)

First, mother failed to file written notice of a motion for a continuance prior to the section 366.26 hearing, as required. (§ 352, subd. (a).) Moreover, mother did not, and does not, argue that there was good cause for the court to entertain an oral motion for continuance. (*Ibid.*)

Second, mother failed to show good cause for actually granting a continuance. She requested a 60-day continuance to allow the maternal grandparents to “follow

through” with the exemption package on the relative placement request. Mother argues that the relative placement preference applied at this point in the proceedings under section 361.3, subdivision (d). Section 361.3, subdivision (d), provides that subsequent to the disposition hearing, “whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives *who have not been found to be unsuitable* and who will fulfill the child’s reunification or permanent plan requirements.” (Italics added.) Here, the maternal grandparents had already been considered for placement several times throughout the dependency and had been found unsuitable. They were initially evaluated for placement at the beginning of the dependency; however, they failed to comply with requests for a home evaluation, and the process was cancelled on December 14, 2011. A second referral was made to the RAU on March 5, 2012. At that time, it was reported that the grandparents had a CPS history which required further documentation, assessment, and approval. There was a substantiated allegation of child abuse as to the maternal grandfather, and a substantiated allegation of general neglect as to the maternal grandmother. In August 2012, their request for an exemption was denied, and their home was not cleared for placement. The grandparents had now requested to be assessed for placement a third time. By the time of the section 366.26 hearing, the RAU supervisor had already denied the referral and was simply waiting for the Assistant Regional Manager’s final decision. No continuance was needed to consider the maternal grandparents for placement.

Furthermore, mother failed to show good cause to grant a continuance to allow her counsel to consider filing a section 388 petition regarding updated information on her domestic violence classes. She asserted that she had now done 13 classes. There is no indication in the record why her counsel did not file a section 388, or consider doing so, before the section 366.26 hearing. The hearing was set four months prior, in October 2013. Thus, there was ample time to file a petition before the hearing. In any event, mother's reunification services were terminated because she showed minimal progress. Although she participated in some services, she did not benefit from them. She still insisted that she could not be held responsible for the children's severe injuries. Thus, the allegation that she had now completed 13 domestic violence classes would not have demonstrated a sufficient amount of changed circumstances, if her counsel did decide to file a section 388 petition.

Ultimately, granting a continuance would have been contrary to the children's interest. (§ 352, subd. (a).) In considering a child's interests, the court must give substantial weight to the child's need for prompt resolution of his or her custody status and the need to provide the child with a stable environment. (*Ibid.*) At this point in the proceedings, mother's reunification services had already been terminated, and the focus had shifted to the children's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) This dependency had gone on for over two years. The children were living with prospective adoptive parents who were committed to providing them with a loving, stable, and nurturing home on a permanent basis. The children were

attached to the prospective adoptive parents and wanted to stay with them. Thus, it was not in the children's interests to delay the matter further. The court properly exercised its discretion in denying the continuance.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

MILLER
J.